

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

BOUNTY ISLAND CORPORATION d/b/a WESTWOOD
COLLEGE OF AVIATION TECHNOLOGY 1/

Employer

and

Case No. 31-RC-7829

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, DISTRICT
LODGE 141-M, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and will effectuate the purposes of the Act to assert jurisdiction herein. ^{2/}

3. The Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{3/}

INCLUDED: All full-time and part-time airframe and power plant instructors employed at the Employer's Inglewood, California facility.

EXCLUDED: All other employees, including tool crib attendants, student coordinators, record administrators and assistant record administrators, receptionists, janitors and maintenance workers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Association of Machinists and Aerospace Workers, District Lodge 141-M, AFL-CIO**.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *National Labor Relations Board v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of the Decision, 2 copies of an election eligibility list, containing the **FULL** names and addresses of all the eligible voters shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the office of Region 31, 7th Floor, 11150 West Olympic Boulevard, Los Angeles, California 90064-1824, on or before **March 10, 2000**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **March 17, 2000**. 4/

DATED at Los Angeles, California this 3rd day of March, 2000.

/s/ James J. McDermott
James J. McDermott, Regional Director
National Labor Relations Board
Region 31
11150 West Olympic Blvd., Suite 700
Los Angeles, CA 90064-1824

FOOTNOTES

- 1/ The parties names appear as corrected at the hearing.
- 2/ The parties stipulated, and I find, that the Employer, a Delaware corporation, is engaged in the operation of an aviation technology instruction school located in Inglewood, California, that during the last calendar year, a representative period, the Employer derived gross revenues in excess of \$1 million, and received goods and materials valued in excess of \$50,000 directly from enterprises located outside the State of California. Accordingly, I find that the Employer satisfies the statutory as well as the Board's discretionary standards for the exercise of jurisdiction over educational institutions. Windsor School, 200 NLRB 991 (1972).
- 3/ The petitioner seeks to represent a bargaining unit comprised solely of the Employer's course instructors. However, the Employer contends that employees employed in the following job classifications must also be included in the unit: tool crib attendants (3 employees); student coordinator (1 employee); records administrator (1 employee); assistant records administrator (1 employee); receptionists (2 employees); janitors and maintenance workers (3 employees).

The evidence indicates that the Employer is a for-profit vocational school which prepares students for careers as airframe and powerplant mechanics. The Employer is certified by the Federal Aviation Agency (FAA), which has certain instructor, curriculum, and reporting requirements. The Employer's certification provides for a 2100 hour instructional program; a student who successfully completes the program is eligible for an airframe and powerplant mechanics certificate (A&P).

The first issue is whether the Employer's instructors are professional employees, thereby requiring them to be in a unit separate from non-professionals. The record reveals that the Employer employs approximately 20 instructors, who are required by the FAA to have an A&P certificate. The Employer prefers its instructors to also have previous experience as mechanics, although this is not required by the FAA. An instructor may also have a college degree or a specialty,

although this is required by neither the Employer nor the FAA. There is no evidence that instructors must have any training or certification beyond the A&P. Thus, I find the instructors are not required to have the advanced knowledge and specialized instruction necessary for classification as professional employees within the meaning of Section 2(12) of the Act, but rather are technical employees. See, e.g., *Audiovox Communications Corp.*, 323 NLRB 647 (1997).

The remaining issue is whether the additional unit classifications urged by Employer share a sufficient community of interest with the instructors as to require their inclusion in the unit. The record reveals that instructors spend virtually all of their worktime in the classroom teaching students; classes are held during the day and at night. The instructors are under the direct supervision of the Director of Education, and are the Employer's only salaried employees. They are also the only employees who are evaluated by the students. Instructors maintain classroom "grade books" in which student attendance and grade records are kept on a daily basis.

The Employer employs a Records Administrator and Assistant Records Administrator (RA's) who work in the Business Office and report to the Business Office Manager. The RA's maintain all non-financial student records, and transpose on a daily basis the attendance and course completion records kept in the instructors' grade books into individual student files, to satisfy FAA requirements. The RA's schedule student make-up work; in doing so, an RA gives the student a form to be signed by the instructor upon completion of the work, which the RA then places in the student's file after the instructor signs it. If a student has a discipline problem, the instructor can fill out a Student Counseling form, which is given to the RA and placed in the student's file. The RA is responsible for filling out a variety of other student forms, including special entry into class, change of grade, makeup credit, or "status change" (e.g., dropping a class, suspension, 2-day absence); these forms are usually placed in student files without first being reviewed by the instructor. The RA and the instructor have direct communication only infrequently, when either of them has a question or doubt about a student's attendance or coursework. The Employer also employs a Placement Coordinator/Student Coordinator, who ensures that students take all of

the exams required by the FAA, and who coordinates with potential employers and recruiters for student job placement. The Coordinator also seeks information from the instructors as to the individual abilities of various students, so as to assist their job placement efforts. When a recruiter visits the campus, the Coordinator notifies the instructor, who in turn announces the visit in class. The Coordinator also occasionally goes into the classroom to contact students regarding potential employers, and monitors student exams as they are given. The Coordinator may also have direct communication with an instructor when the latter seeks to verify whether a student showed up to take an exam, or passed an exam, or to find out how a student behaved during an exam. The Employer maintains a tool crib and library area, located between the two hangars used for student lab work. The Tool Crib Attendant is usually a student, who maintains the inventory, occasionally repairs tools, keeps the area clean, and checks tools out to students. Instructors also visit the tool crib, but enter it from a different door (so they won't have to stand in the student line), and usually get the tools themselves; they only seek assistance from the Attendant when they cannot locate the required tool. Very infrequently, an instructor will fill in for an absent Tool Crib Attendant. The Janitors and Maintenance Workers' duties overlap; they clean and maintain the facility. Occasionally, an instructor can give them an order to perform maintenance or cleaning, or can call them for help. In its attempt to develop "teamwork", the Employer recently asked a few instructors, supervisors, and the Tool Crib Attendant to re-stripe the parking lot, a task which would ordinarily be done by the maintenance crew. The Receptionists answer the facility's telephones and take messages for students or other employees. Occasionally they must enter the classroom to deliver an emergency message to a student or instructor. When a new student is enrolled, the Receptionist generates a student file and enters onto it the student's enrollment information; this is the file which is then maintained by the RA.

The record reveals that all of the Employer's employees, including instructors, receive the same holiday, leave, retirement and medical benefits, share the same lunch room, and receive free tuition to the Employer's school. However, instructors receive paid time-off between classes, while other employees accrue

vacation time based on length of service. All employees are subject to the same handbook of employment policies; however, lengthy instruction manuals are also issued for instructors and "admissions" personnel, i.e., receptionists. Employees generally work daytime hours; instructors teach both day and night classes. . As noted above, instructors are the only salaried employees; the other classifications are paid hourly. Department staff meetings are held weekly, and there are quarterly all-employee meeting; in this regard, the Employer is planning to implement "team" meetings comprised of employees from various departments, including instructors. Executive Director Katherine Wohlford makes the final determination on all staff hiring and firing.

It is well established that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. See, e.g., Morand Bros. Beverage Co., 91 NLRB 409 (1950), enf. 190 F2d 576 (7th Cir. 1951). Where a petitioned-for unit is limited to technical employees, the Board has customarily found such a unit to be appropriate, since technical employees tend to share distinctive training and functions. Vickers, Inc., 124 NLRB 1051 (1959); United Shoe Machinery Corp., 185 NLRB 200 (1970). Thus, "in order to insist on an alternative unit, an employer must first prove that the petitioned-for unit of technical employees is an *inappropriate* unit based on their strong community of interests with other employees, Audiovox Communications Corp., supra at p. 650. In the instant case, the record reveals minimal daily interchange between instructors and the other classifications urged by the Employer. Further, while all of the Employer's employees share a lunchroom and some benefits, instructors are the only salaried employees, the only ones with regular night hours, and the only ones with paid leave which is not dependent on their length of service. Finally, instructors are the only employees whose entire worktime, except for a small percentage necessary for recordkeeping, is spent with students in the classroom. Thus, based on all of the foregoing, I do not find that the Employer's instructors share the "overwhelming community of interest" with other classifications so as to deny them their own unit. Lundy Packing Company, 314 NLRB 172; Audiovox Communications Corp., supra. Accordingly, I find that the petitioned-for unit is an appropriate unit.

- 4/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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